Ex. 1

At Supreme Court of the State of New York at the Albany County Courthouse, Eagle Street, Albany, New York, this 25th day of July, 2008

PRESENT: HON. RICHARD PLATKIN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

FILE COPY

PEOPLE OF THE STATE OF NEW YORK, by ANDREW M. CUOMO, Attorney General of the State of New York, NEW YORK STATE DEPARTMENT OF CIVIL SERVICE, and STATE OF NEW YORK,

Plaintiffs,

- against -

EXPRESS SCRIPTS, INC., ESI MAIL PHARMACY SERVICE, INC., CONNECTICUT GENERAL LIFE INSURANCE COMPANY, and CIGNA LIFE INSURANCE COMPANY OF NEW YORK,

Defendants.

CONSENT ORDER AND JUDGMENT

Index No. 4669-04
RJI 01-04079765

Plaintiffs, the People of the State of New York, by Andrew M. Cuomo, Attorney General of the State of New York, New York State Department of Civil Service, and State of New York (collectively, "the State" or "the Plaintiffs"), filed this action for an Order and Judgment pursuant to Executive Law § 63(1) and pursuant to Executive Law § 63(12) against Express Scripts, Inc.; ESI Mail Pharmacy Service, Inc., Connecticut General Life Insurance Company; and CIGNA Life Insurance Company of New York (collectively, "the Defendants"). Plaintiffs and all Defendants have signed the annexed Consent and Stipulation agreeing to the entry of this Consent Order and Judgment

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("Judgment") for the purposes of settlement only and without trial of any issue of fact or law.

NOW, upon the motion of Andrew M. Cuomo, Attorney General of the State of New York, IT HEREBY IS ORDERED AND ADJUDGED AS FOLLOWS:

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto, and venue is proper as to all such parties in the Supreme Court of the State of New York, County of Albany.

2. Plaintiffs and Defendants, by their signatures to the annexed Consent and Stipulation, waive any right to appeal, petition for certiorari, or move to reargue or rehear this Judgment, and Defendants waive all jurisdictional defenses to the claims set forth in the Complaint.

3. Entry of this Judgment is in the public interest.

I. PAYMENT

4. Defendants will pay a total sum of Twenty-Seven Million Dollars ($27,000,000) to the State in full and complete settlement of all causes of action asserted in the Complaint in this matter. The payment of $27,000,000 will be made by certified check to the "Department of Law, State of New York" within thirty (30) days of the Effective Date of this Judgment.

II. DEFINITIONS OF TERMS FOR JUDGMENT ONLY

5. "Actual Cost Savings" shall mean, with respect to a Proposed Drug Interchange, the actual amount in dollars a Client Plan and Consumer, respectively, will save in Net Drug Costs annually if a Drug Interchange occurs at the expected dosage, assuming the Consumer will use the drug for twelve consecutive months.

6. "Brand Drug" shall mean any drug other than a Generic Drug.

7. "CIGNA" shall mean the Connecticut General Life Insurance Company, the CIGNA Life Insurance Company of New York, past and present subsidiaries, affiliated companies, corporate predecessors, successors and assigns.

8. "Clear & Conspicuous" shall mean a disclosure in such size, color, contrast and location, that it is readily noticeable, readable and understandable; is presented in proximity to all information necessary to prevent it from being misleading or deceptive, in a manner that such information is readily noticeable, readable and understandable and not obscured in any manner; and if a print disclosure, it appears in a type size, contrast and location sufficient for a typical Consumer or Prescriber to read and comprehend it. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies information or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable and understandable, and is not obscured in any manner. A print disclosure must appear in the type and size, contrast and location sufficient for a Consumer or Prescriber to read and comprehend it. For purposes of this Judgment, nothing in this definition shall prevent Defendants from disclosing prescription or health and safety information first.

9. "Client Plan" shall mean the Empire Plan and any other pharmacy benefit plan with its principal place of business in New York State for which Defendants either provide or administer a pharmacy benefit plan in New York State. However, Client Plans shall not include: (i) any federal governmental entity, any federal health care or pharmacy benefit program (including without limitation Medicare, Medicaid, CHAMPUS,

TRICARE, and the Federal Employees Health Benefit Plan), or any non-governmental entity to the extent such entity is providing or administering a pharmacy benefit plan under any such federal program, or (ii) any state (other than the State of New York) or any agency, subdivision, instrumentality, county or municipality of any such state.

10. "Consumer" shall mean a person who receives prescription drug benefits under a plan sponsored by a Client Plan.

11. "Currently Prescribed Drug" shall mean a drug prescribed for a Consumer that is the subject of a Drug Interchange Solicitation.

12. "Drug Interchange" shall mean any change from one branded prescription drug to another branded prescription drug, requested by ESI. "Drug Interchange," however, shall not include those Drug Interchanges: (a) initiated pursuant to a drug utilization review; (b) initiated for Consumer safety reasons; (c) required due to market unavailability of the Currently Prescribed Drug; (d) made by ESI Mail Pharmacy Service, Inc. from a Brand Drug to its Generic or to a generically (i.e. chemically) equivalent Brand Drug with the same dosage and strength where such changes are made as part of conventional pharmacy practices and are not related to a Drug Interchange program undertaken in conjunction with a Client Plan and that do not increase costs to Consumers; (e) required when the Currently Prescribed Drug is not covered by the formulary or plan applicable to the Consumer, or is subject to a prior authorization requirement, step therapy requirement or other feature of the Client Plan's benefit design that requires the use of the Proposed Drug before coverage is available for the Currently Prescribed Drug.

13. "Drug Interchange Related Health Care Costs" shall mean a Consumer's co-pay for tests, physician visits, and other health care services that are incurred in

accordance with a treating physician's instructions, and either (a) are incurred as a result of a Drug Interchange, for the purpose of assessing the continuum of previous therapy, for up to six months following Drug Interchange; or (b) are incurred as a result of a Drug Interchange Solicitation, for the purpose of assessing whether to undertake a proposed Drug Interchange.

14. "Drug Interchange Solicitation" shall mean any communication for the purpose of proposing a Drug Interchange.

15. "Empire Plan" shall mean the health and drug benefit plan that has been and is administered by the New York State Department of Civil Service for active and retired State and local government employees and their dependents as provided for in New York Civil Service Law Article XI.

16. "ESI" shall mean Express Scripts, Inc. and ESI Mail Pharmacy Service, Inc., and their respective past and present subsidiaries, affiliated companies, corporate predecessors, successors and assigns.

17. "Generic" or "Generic Drug" shall mean a drug or biologic product that has been approved by the Food and Drug Administration ("FDA") under the Federal Food Drug and Cosmetic Act or the Public Health Service Act on the basis, in whole or in part, of studies, data or other information submitted to FDA in connection with the application for a previously-approved product or that has been otherwise deemed chemically equivalent to a branded drug or biologic product as signified by: an AB rating by the FDA; approval by the FDA as a biogeneric product, biosimilar product, or follow-on biologic product; approval for substitution on any State of New York formulary; or approval for substitution by the ESI Pharmacy and Therapeutics ("P&T") Committee.

18. "Generic Price List" shall mean a list of Generic drugs used to bill Client Plans based on a "Maximum Allowable Cost" ("MAC") or a "Maximum Reimbursement Amount" ("MRA") determined by ESI.

19. "Minimum Cost Savings" shall mean the minimum amount in dollars a Client Plan and Consumer, respectively, will save in their costs annually if a Drug Interchange occurred at the expected dosage.

20. "Net Drug Cost" shall mean the price charged to a Client Plan for a prescription drug whether that drug is delivered through a retail pharmacy or mail. The Net Drug Cost may be reduced by all discounts, credits, Pharma Revenue and other payments that lower the cost of the drug, to the extent the benefits of such payments are provided to the Client Plan, but shall not be reduced by discounts, credits, Pharma Revenue and other payments that are paid to and retained by ESI.

21. "Pharma Revenue" shall mean any of the following types of payments received by ESI from pharmaceutical manufacturers in connection with the administration of pharmacy benefit management services: formulary rebates, market share rebates, administrative fees, data fees, data management fees, rebate administration fees, formulary compliance fees, performance fees, professional services fees, and any type of payment generated by goods or services provided to a Client Plan. Pharma Revenue shall not include manufacturer payments received by ESI that are not related to ESI's administration of pharmacy benefit management services and not generated by goods or services provided to a Client Plan. Pharma Revenue shall not include purchase discounts on drugs purchased and dispensed by ESI, including retrospective discounts based solely on aggregate purchase volume.

22. "Plaintiffs" shall mean the People of the State of New York, the New York State Department of Civil Service, and the State of New York.

23. "Prescriber" shall mean a physician, dentist, physician's assistant, optometrist or other health care professional authorized by law to write prescriptions for prescription drugs.

24. "Proposed Drug" shall mean the drug or drugs that ESI, in its Drug Interchange Solicitation, proposes to substitute for a Currently Prescribed Drug.

25. "Prospective Client Plan" shall mean any entity that is seeking to become, or that ESI seeks to make, a Client Plan.

III. INJUNCTIVE RELIEF

A. PHARMA REVENUE

i. DISCLOSURES TO CLIENT PLANS

26. With respect to each Client Plan that has contracted to receive (directly or by credit) payments from ESI based on any Pharma Revenue attributable to utilization by Consumers of the Client Plan, ESI shall provide those Client Plans with a Client Pharma Revenue Report for each Quarter and Fiscal Year during which the Client Plan is entitled to receive any such Pharma Revenue within 90 days after the end of each Quarter or Fiscal Year. The Client Pharma Revenue Reports shall identify, for the reported time period, the following information:

a. the dollar amount of Pharma Revenue, with respect to all clients; and

b. the percentage of all Pharma Revenue retained by ESI with respect to all clients.

27. If ESI does not know the precise reported figure at the time of its report, ESI shall provide its current best estimate of the reported information, provided that, with respect to each report, should the reported information subsequently need revision in accordance with generally accepted accounting principles, ESI will provide an update to the reported information to reflect that revision.

28. If ESI provides its current best estimate of the reported information, ESI will state so in the report.

29. The Pharma Revenue Reports shall present the above information in a Clear & Conspicuous manner that serves to inform Client Plans of all Pharma Revenue broken down by type of Pharma Revenue, including, but not limited to, manufacturer rebate payments for sale of drugs and fees for sale of Client Plan data to manufacturers.

ii. DISCLOSURES TO PROSPECTIVE CLIENT PLANS

30. ESI shall disclose to each Prospective Client Plan, prior to executing any agreement to provide or administer drugs with such Prospective Client Plan:

a. that ESI solicits and receives Pharma Revenue and that ESI may make payments to Client Plans of amounts based on Pharma Revenue attributable to utilization by Consumers of Client Plans or may retain Pharma Revenue for itself, depending on contract terms; and

b. a "Total Pharma Revenue Report," which will identify for the most recent fiscal year, the following information with respect to all of ESI's clients: (1) the dollar amount of its total Pharma Revenue; and (2) the percentage of Pharma Revenue that they retained, with respect to all of its clients. The Total Pharma Revenue Reports shall present the above information in a Clear & Conspicuous manner that serves to inform

Prospective Client Plans of all Pharma Revenue earned by ESI broken down by source of Pharma Revenue, including, but not limited to, manufacturer rebate payments based on Consumer utilization and fees, if any, for sale of Client Plan data to manufacturers.

B. PRICING DISCLOSURES

31. ESI shall provide to Client Plans and Prospective Client Plans, in a Clear & Conspicuous manner, the following information:

a. where it uses a maximum allowable cost ("MAC") or a maximum reimbursement amount ("MRA"), ESI shall disclose the definition of the client MAC or MRA list;

b. the factors that it intends to utilize for that Client Plan or Prospective Client Plan in classifying drugs as Brand Drugs or Generic Drugs for pricing purposes and their Brand or Generic classification of any individual drug;

c. the factors that it intends to utilize for that Client Plan or Prospective Client Plan to calculate drug prices, either individually or by category or class, and the definition of "average effective discount" or "actual discount" that it uses when making discount representations to Client Plans or Prospective Client Plans;

d. the targeted average discount rate for the Generic Price List that it uses to bill that Client Plan or intends to use to bill that Prospective Client Plan:

i. the factors utilized to calculate those targeted average discount rates;

ii. the factors utilized to determine inclusion of drugs on those Generic Price Lists; and

iii. the current drug composition of the Generic Price List used to bill the Client Plan or will use to bill the Prospective Client Plan, including but not limited to the number and types of drugs on the list, and the criteria for determining overrides or exclusions that may result in a temporary drug pricing change; and

e. upon request by the Client Plan or Prospective Client Plan, the current discount rate for any individual drug on the applicable Generic Price List.

32. ESI shall disclose the information specified in Paragraph 31(a) - (d)(ii) to each Client Plan annually or when such information changes, and the information specified in Paragraph 31(d)(iii) at least annually or upon request by the Client Plan.

C. DRUG PREFERENCE PROGRAMS

i. RESTRICTIONS ON DRUG INTERCHANGES

33. Unless otherwise specifically directed by a Client Plan with respect to a Proposed Drug Interchange, ESI shall not with respect to a Consumer:

a. make any Drug Interchange Solicitation where the Net Drug Cost of the Proposed Drug exceeds that of the Currently Prescribed Drug;

b. make any Drug Interchange Solicitation where the Currently Prescribed Drug has Generic equivalents and the Proposed Drug has no Generic equivalents, unless the Proposed Drug has a lower Net Drug Cost than all Generic equivalents of the Currently Prescribed Drug;

c. make any Drug Interchange Solicitation where the patent protection for the Currently Prescribed Drug is scheduled to expire within six months of the Drug Interchange Solicitation, or where the effect of the Proposed Drug Interchange reasonably is to avoid substitution for, or Generic competition against, the Currently Prescribed Drug (excepting Drug Interchanges with the effect of decreasing Net Drug Costs); and

d. make any Drug Interchange Solicitation to a Consumer who, within two years preceding the solicitation, and with respect to the same therapeutic class involved in the Proposed Drug Interchange, has either (i) interchanged his or her drug following a Drug Interchange Solicitation from ESI or (ii) interchanged his or her drug following an ESI Drug Interchange Solicitation from ESI but had the Interchange reversed, unless all of the Proposed Drugs in the current Drug Interchange Solicitation were not among the Proposed Drugs in the prior Drug Interchange Solicitation.

34. ESI shall not make any Drug Interchange Solicitation for (or obtain an interchange promise for) the prescription drug of any Consumer without first obtaining express verifiable authorization from the Prescriber or authorized representative of the Prescriber of the Currently Prescribed Drug; ESI shall maintain records for five years memorializing, with respect to each Drug Interchange, how authorization was obtained, including the name of the person providing authorization of the Drug Interchange, whether the authorization was written or oral, and, if oral and by a person other than the Prescriber, that person's title or position.

ii. DRUG INTERCHANGE SOLICITATIONS

35. All Drug Interchange Solicitations to a Prescriber with respect to a Client Plan and/or Consumer shall:

a. identify the first and last name and title of the person making the Drug Interchange Solicitation;

b. state that ESI is soliciting a Drug Interchange;

c. identify the Minimum Cost Savings or Actual Cost Savings to be achieved by interchanging to the Proposed Drug from the Currently Prescribed Drug;

d. describe under what circumstances the Currently Prescribed Drug will continue to be covered by the Client Plan, if such is the case;

e. describe the difference in co-pay, if any, or the absence of effect on co-pay, if such is the case;

f. if ESI receives Pharma Revenue as a result of the Proposed Drug Interchange or the Interchange Solicitation that is not reflected in net Drug Cost because it is compensation that does not inure to the benefit of the Client Plan, ESI shall disclose that it receives such compensation or potential compensation.

iii. MONITORING OF DRUG INTERCHANGES

36. ESI shall monitor the effects of Drug Interchanges requested by them upon the health of Consumers, and shall report to their Pharmacy & Therapeutics Committee ("P&T Committee"), not less than quarterly, the results of such monitoring. Such monitoring shall include, without limitation, a system designed to:

a. identify Consumer and Prescriber communications that concern the efficacy or health effects of a Drug Interchange; and

b. capture information from such communication and generate reports on Consumer and Prescriber communications concerning Drug Interchanges.

37. The P&T Committee shall reasonably consider the results of the monitoring.

D. CONSUMER RIGHTS CONCERNING DRUG SWITCHING

38. Drug Interchanges: ESI shall ensure that all New York State Consumers, for which they provide and/or administer a pharmacy benefit:

a. shall not have their prescriptions included in a Drug Interchange (also known as "switched") when the cost to the consumer of the new drug exceeds that of the current drug, unless a Client Plan has specifically directed otherwise;

b. shall not have their prescriptions switched when there is a Generic equivalent available for the Currently Prescribed Drug, unless the new drug has a lower cost than all Generic equivalents of the Currently Prescribed Drug or a Client Plan has specifically directed otherwise;

c. shall not have their prescriptions switched when their current drug's patent will expire within six months, meaning that a Generic will shortly be available, unless a Client Plan has specifically directed otherwise;

d. shall not have their prescriptions switched within two years after having their prescriptions switched within the same therapeutic class of drugs, unless a Client Plan has specifically directed otherwise;

e. shall not have their prescriptions switched outside of the restrictions and procedures contained in this Judgment;

f. are notified of the existence of a Drug Interchange Related Health Care Costs policy;

g. are notified of any material differences, as determined by ESI's P&T Committee, between the Currently Prescribed Drug and the Proposed Drug with respect to side effects or potential effects on patient health and safety;

h. shall receive by mail a written communication for prescriptions filled at a retail pharmacy that were switched due to a Drug Interchange Solicitation advising the Consumer of the Prescriber's approval of the Drug Interchange. ESI's written communication shall Clearly & Conspicuously:

i. state that ESI requested the Drug Interchange by contacting the Consumer's Prescriber;

ii. state that the Prescriber approved the Drug Interchange;

iii. not represent that the Prescriber initiated the Drug Interchange;

iv. identify the Proposed Drug and the Currently Prescribed Drug;

v. identify the Minimum Cost Savings or Actual Cost Savings;

vi. describe under what circumstances the Currently Prescribed Drug will continue to be covered by the Client Plan, if such is the case;

vii. describe the difference in co-pay, if any;

viii. if ESI receives compensation from a drug manufacturer as a result of the Proposed Drug Interchange or the Drug Interchange Solicitation that is not reflected in the Net Drug Cost because it is compensation that does not inure to ESI, ESI shall disclose the fact of such compensation or potential compensation;

ix. advise the Consumer that he or she or their Prescriber may decline the Drug Interchange, in which case ESI will provide to the Consumer the Currently Prescribed Drug, if the Currently Prescribed Drug is on the Client Plan's formulary and the Consumer is willing to pay the difference, if any, in co-pay; and

x. advise the consumer of a Drug Interchange Related Health Care Costs policy as described in Paragraph 40.

j. shall have sent to them, within one business day, a written communication for mail order prescriptions that were switched due to a Drug Interchange Solicitation advising the Consumer of the Prescriber's approval of the Drug Interchange. ESI's written communication shall Clearly and Conspicuously:

i. state that the ESI requested the Drug Interchange by contacting the Consumer's Prescriber;

ii. state that the Prescriber approved the Drug Interchange;

iii. not represent that the Prescriber initiated the Drug Interchange;

iv. identify the Proposed Drug and the Currently Prescribed Drug;

v. identify the Minimum Cost Savings or Actual Cost Savings;

vi. describe under what circumstances the Currently Prescribed Drug will continue to be covered by the Client Plan, if such is the case;

vii. describe the difference in co-pay, if any;

viii. if ESI receives compensation from a drug manufacturer as a result of the Proposed Drug Interchange or the Drug Interchange Solicitation that is not reflected in the Net Drug Cost because it is compensation that does not inure to ESI, ESI shall disclose the fact of such compensation or potential compensation;

ix. advise the Consumer that he or she or their Prescriber may decline the Drug Interchange, in which case ESI will provide to the Consumer the Currently Prescribed Drug, if the Currently Prescribed Drug is on the Client Plan's formulary and the Consumer is willing to pay the difference, if any, in co-pay; and

x. advise the consumer of the Drug Interchange Related Health Care Costs policy as described in Paragraph 40.

j. shall be made to them, within one business day, an electronic or telephonic communication for mail order prescriptions that were switched due to a Drug Interchange Solicitation advising the Consumer of the Prescriber's approval of the Drug Interchange. ESI's communication shall:

i. state that ESI requested a Drug Interchange by contacting the Consumer's Prescriber;

ii. state, that following the Interchange Solicitation, the Prescriber approved the Drug Interchange;

iii. not represent to the Consumer that the Prescriber initiated the interchange;

iv. advise the Consumer that he or she or their Prescriber may decline the Drug Interchange, in which case Defendants will provide to the Consumer the Currently Prescribed Drug, if the Currently Prescribed Drug is on the Client Plan's formulary and the Consumer is willing to pay the difference, if any, in co-pay; and

v. advise the Consumer that further written information about the Drug Interchange will arrive in the mail and give a toll-free number so that the Consumer may speak with a customer service representative about the Drug Interchange.

k. shall have the right to contact the New York State Office of Attorney General, Health Care Bureau, in writing at The Capitol, Albany, NY 12224-0341, or by telephone at 800-428-9071, regarding any issue concerning their rights under this agreement.

39. **Rejected Drug Interchanges:** Unless a Currently Prescribed Drug is no longer on the Client Plan's formulary or the Consumer is unwilling to pay any higher applicable co-pay or other costs, ESI shall:

a. cancel and reverse the Drug Interchange upon written or oral instructions from a Prescriber or Consumer;

b. maintain a toll free number(s) during business hours, Eastern time, at least eight hours per day, to handle telephone calls from Consumers and Prescribers in response to Drug Interchange confirmations and rejections;

c. maintain the customer service standards (e.g. wait time) for the Drug Interchange telephone numbers in accordance with ESI's other customer service standards;

d. if the Proposed Drug has not been dispensed, dispense the Currently Prescribed Drug; and

e. if the Proposed Drug has already been dispensed, obtain a prescription for and dispense the Currently Prescribed Drug and charge the Consumer for only one co-pay and shipping and handling fees.

40. **Drug Interchange Related Health Care Costs:** ESI shall:

a. ensure that a Consumer does not pay out-of-pocket costs for Drug Interchange Related Health Care Costs incurred by a Consumer by reimbursing the Consumer for such costs, within thirty days of receipt of a claim form for such costs, or ensuring that the Client Plan reimburses the Consumer for such costs;

b. enact and follow a procedure for reimbursing Consumers such costs, by which ESI shall, without limitation;

i. permit Consumers, Prescribers, or Consumer's physician to request such reimbursement by telephone or in writing;

ii. upon such request, provide a single page claim form, including instructions, to request reimbursement. For requests initiated by Consumers, ESI may require Consumers to provide information showing that Drug Interchange Related Health Care costs were incurred, which requirement shall be satisfied by a Consumer's physician's or Prescriber's notation at a designated place on the claim form, by providing a Consumer's physician's written order, or by other evidence showing payment of costs incurred as a result of a Drug Interchange; and

iii. if a Consumer, because of a deductible or cap requirement, pays actual costs of tests or physician visits instead of co-pays, then that Consumer's Drug Interchange Related Health Care Costs shall be based on the co-pay (if any) that would apply upon satisfaction of the deductible or the co-pay applicable prior to the cap being met.

c. not directly or indirectly prevent or discourage Consumers or Consumer's physicians from requesting or receiving reimbursement for Drug Interchange Related Health Care Costs; and

d. have the right to, in its discretion, cease to seek the proposed Drug Interchange.

E. PHARMACEUTICAL ETHICS

41. ESI shall:

a. adopt the code of ethics of the American Pharmacists Association for its employed pharmacists, or similar code of ethics for its employed pharmacists (ESI's Code of Ethics for Patient Services Pharmacy Practice satisfies this requirement);

b. make available to its employed pharmacists, Client Plans, and Consumers copies (which may be in electronic form or available on a website) of such codes of ethics or professional standards, as referenced in Paragraph 41(a);

c. require its pharmacists to comply with all state law requirements governing pharmacists;

d. permit its pharmacists to give good faith professional opinions; and

e. require its pharmacists not to fill a prescription if the pharmacist believes that such prescription is not in the best interest of the patient.

F. CIGNA'S RESPONSIBILITIES

42. CIGNA shall ensure that any third party (i.e., non-CIGNA entity) with whom CIGNA sub-contracts for the provision of pharmacy benefit management services with respect to any self-insured Client Plan with its principal place of business in New York and with greater than five-thousand (5,000) members resident in New York and any other Client Plan with its principal place of business in New York with greater than one-thousand (1,000) members resident in New York and has contracted to receive (directly or by credit) payments based on any Pharma Revenue attributable to utilization by Consumers of the Client Pan from a CIGNA sub-contractor will abide by all of the injunctive relief provisions in section "III. INJUNCTIVE RELIEF," paragraphs 26 through 41, the same as is required of ESI.

IV. CONFIDENTIALITY

43. Defendants may require Client Plans or Prospective Client Plans to enter into a written agreement, in a form prepared by Defendants, obligating them to keep confidential any information or material disclosed to them, as a condition precedent to their receiving it. Nothing in this Judgment shall restrict Defendants' rights pursuant to New York FOIL, Public Officers Law § 84 *et seq*.

V. GENERAL PROVISIONS

44. Release. a. The Plaintiffs, individually and collectively, release all Defendants and their respective past and present parent corporations, subsidiaries, affiliates, limited liability companies, and partnerships, and the respective past and present officers, directors, employees, agents, and attorneys of any of them, as well as the respective predecessors, successors, executors, administrators and assigns of any of them (collectively, the "Released Persons") from any and all civil claims, damages, penalties, and causes of action, which the Plaintiffs could have asserted through and including the Effective Date of this Judgment, related either to the parties' performance under the contracts or subcontracts specified in the Complaint or any amendments thereto, or to any allegations, omissions, or acts that are contained in the Complaint filed in this action (the "Covered Conduct").

b. The Plaintiffs covenant and agree that they shall not proceed with or institute any civil action or proceeding, either individually or collectively, against the Released Persons, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorney fees, or costs, for any conduct undertaken or omissions, up through and including the Effective Date of this Judgment, relating to the

Covered Conduct.

c. Notwithstanding anything to the contrary contained in this Judgment, no party is released from: (i) any claim arising out of the application for 2004 and 2005 of Section 29.1.1 of Amendment 8 to the contract between DCS and CIGNA, Agreement No. C000470, effective January 1, 1999; and (ii) any claim arising out of DCS's asserted right to recover the entire amount of Pharma Revenue withheld in March 2006, that was described as rebates in ESI's letter dated March 29, 2006, from ESI's Vice President and General Manager, Public Sector Division, to DCS's Contract Manager.

d. Also excluded from this Release is any future action or proceeding brought by Plaintiffs to enforce the terms and provisions of this Judgment or take action based on future conduct by the Released Persons.

e. The Defendants, individually and collectively, release the Plaintiffs from any and all civil claims, damages, penalties, and causes of action, which the Defendants could have asserted through and including the Effective Date of this Judgment, related either to the parties' performance under the contracts or subcontracts specified in the Complaint or any amendments thereto, or to any allegations, omissions, or acts that are contained in the Complaint filed in this action.

f. Also excluded from this Release is any right of Defendants under Paragraph 44(c) and any future action or proceeding brought by Defendants to enforce the terms and provisions of this Judgment.

45. Non-Approval of Conduct. Nothing herein constitutes approval by the Plaintiffs of Defendants' preferred drug or rebate programs, pricing policies and practices or any other business practices. Defendants shall not make any representations contrary to

this Paragraph. This Judgment is not an admission or denial by Defendants of any wrongdoing or violation of law or contract whatsoever (including without limitation anything alleged in the Complaint in this action), and shall not be admissible as such against them in any forum.

46. Effective Date. The "Effective Date" shall be the date of entry of this Judgment. The provisions of Paragraphs 26-32 hereof, inclusive, shall become effective ninety (90) days after the Effective Date of this Judgment, and shall expire and be of no further force and effect five (5) years after the Effective Date of this Judgment. The provisions of Paragraphs 33-42 hereof, inclusive, shall become effective ninety (90) days after the Effective Date of this Judgment, and shall have no expiration provision.

VI. COMPLIANCE PROVISION

47. One year after the Effective Date of this Order, and then annually for five (5) years from the Effective Date of this Order, ESI and CIGNA shall provide the Attorney General of the State of New York a certification, signed by a Senior Officer, certifying their compliance with this Order. The annual certifications may be accompanied by a report showing the manner in which they have complied with this Order.

VII. ADMINISTRATIVE PROVISIONS

48. Jurisdiction is retained of this matter for all purposes, including but not limited to, the purpose of enabling any of the parties to this Judgment to apply to the Court at any time for such further judgments, orders or other relief as may be necessary or appropriate for the interpretation or modification of this Judgment, for the enforcement by this Court over compliance therewith or for the punishment of violations thereof.

49. The Plaintiffs shall give Defendants thirty (30) days written notice, and an opportunity to respond, if the Plaintiffs contend that the Defendants are not in compliance with this Judgment. The notice shall specify the purported noncompliance. No action, motion or other proceeding shall be served or filed seeking contempt of court or other remedies or sanctions for violation of this Judgment until the Plaintiffs have given the required notice and have discussed ESI's response with ESI, and given ESI an opportunity to cure such purported noncompliance, during the 30-day period.

50. Any party to this Judgment may petition the Court for modification on thirty (30) days notice to all other parties to this Judgment if it believes that the relief provided herein is unduly burdensome due to a material change in business conditions. The parties hereto by stipulation may agree to a modification of this Judgment, which agreement shall be presented to this Court for consideration, provided that the parties hereto may jointly agree to a modification only by a written instrument signed by all parties hereto affected. If any party hereto wishes to seek a stipulation for a modification, it shall send a written request for agreement to such modification to all other affected parties hereto at least thirty (30) days prior to filing a motion with the Court for such modification. ' Within thirty (30) days of receipt of any proposed modification, the receiving parties shall respond in writing. No party herein shall unreasonably withhold its agreement to requested modifications.

51. If, after the date of entry of this Judgment, the State of New York or any of its agencies, boards, instrumentalities or officers enacts or promulgates legislation, rules, regulations or orders with respect to matters governed by this Judgment that conflict with any provision of this Judgment, or if the applicable law of the State shall otherwise change

so as to conflict with any provision of this Judgment, the parties will agree to modify such provision to the extent necessary to eliminate such conflict. Laws, rules, regulations or orders, or other changes in New York State law, with respect to the matters governed by this Judgment, shall not be deemed to conflict with a provision of this Judgment unless the parties cannot reasonably comply with both such law, rule, regulation or order and an applicable provision of this Judgment.

52. Notice of entry of this Judgment, and any subsequent notices or communications, may be served on ESI's and CIGNA's attorneys of record in this action, and such service shall be deemed good and sufficient service on Defendants. Notices of entry of this Judgment, and any subsequent notices or communications, may be served upon the Attorney General of the State of New York, Attention: Bureau Chief, Health Care Bureau, and such service shall be deemed good and sufficient service on Plaintiffs.

VIII. DISMISSAL WITH PREJUDICE

53. This action and all claims asserted in the Complaint are dismissed with prejudice as against all Defendants. Each party shall bear its own costs, fees and expenses.

Dated: Albany, New York
July 25, 2008

ENTER [signature]
J.S.C.
HON. RICHARD PLATKIN, A.J.S.C.